

Application No. 10/785349
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Amendment
Attorney Docket No. S63.2N-9776-US02

Remarks

This Amendment is in response to the Office Action dated May 4, 2005. In the Office Action, claims 1 and 6 - 8 were rejected under 35 USC § 102(e). Claims 2 and 4 - 6 were rejected under 35 U.S.C. § 103(a).

For the reasons presented herein, Applicants have traversed the rejections and assert that the claims are in condition for allowance.

The following comments are presented with paragraph numbers and headings corresponding to those of the Office Action.

3. 35 USC § 102

Claims 1 and 6 - 8 were rejected under 35 USC § 102(c) as being anticipated by Mikus et al. (2002/0035391). Applicants respectfully assert that Mikus does not teach or suggest all of the elements of the instant claims. Instant independent claim 1 states "delivering heat to the stent during the expansion of the expandable region." Similarly, instant independent claim 6 states "heating the stent during delivery." The application of heat does not cause the expansion of the stent; rather, while the stent is expanding (i.e. during expansion or during delivery), heat is transmitted to the stent and subsequently to the vessel in order to prevent restenosis due to neointima growth (pg 1, ¶ 2 and pg 2, ¶ 2). Thus, the application of heat coincides with the expansion of the stent but does not cause expansion of the stent.

Mikus uses hot saline to cause the stent to expand to a larger diameter ([0031], [0036]). Thus, in effect Mikus teaches delivering heat to the stent prior to expansion rather than during expansion as the instant claims recite.

~~Because Mikus fails to teach or suggest all of the elements described in the instant claims the rejection is respectfully traversed. Withdrawal of the rejection is respectfully requested.~~

5. 35 USC § 103

Claims 2 and 4 - 6 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Mikus et al. in view of Guglielmi et al. (6,011,995) in further view of Boylan et al. (2003/0187497). As indicated above, Mikus does not teach or suggest all of the elements of

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instant independent claims 1 or 6. The proposed addition of the contrasting agent of Guglielmi to Mikus does nothing to address the failure of Mikus to teach or suggest all of the elements of the instant claims. The proposed addition of the stent made of steel alloys of Boylan does nothing to address the failure of Mikus to teach or suggest all of the elements of the instant claims.

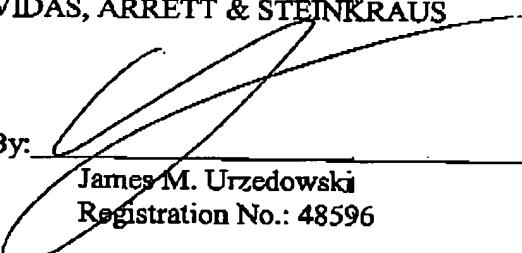
Instant claims 2, 4 and 5 are dependent from independent claim 1. It is recognized that dependent claims are non-obvious under section 103 if the independent claims from which they depend are non-obvious." *Hartness Int'l, Inc. v. Simplimatic Eng'g Co.*, 819 F.2d 1100, 1108, 2 USPQ2d 1826, 1831 (Fed. Cir. 1987); *In re Abele*, 684 F.2d 902, 910, 241 USPQ 682, 689 (CCPA 1982); see also *In re Sernaker*, 702 F.2d 989, 991, 217 USPQ 1, 3 (Fed. Cir. 1983). Withdrawal of the rejection as to claims 2 and 4-6 is respectfully requested.

Conclusion

In light of the above comments, claims 1, 2, and 4 - 8 are believed to be in condition for allowance. Notification to that effect is respectfully requested.

Respectfully submitted,

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